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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAIME BERMEO MARTINEZ,

Defendant and Appellant.

B236132

(Los Angeles County  
Super. Ct. No. VA117236)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
John A. Torribio, Judge. Affirmed.

California Appellate Project and Vanessa Place, under appointment by the Court  
of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Jaime Bermeo Martinez appeals from the judgment entered following a jury trial which resulted in his conviction of two counts of committing a lewd act upon a child, Stephanie (Pen. Code, § 288, subd. (a)),<sup>1</sup> and committing a forcible lewd act upon a child, Yessenia (§ 288, subd. (b)(1)), and the finding that he committed the acts against multiple victims (§ 667.61, subd. (b)). The trial court sentenced Martinez to 30 years to life in prison. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. Facts.*

#### *a. The prosecution's case.*

Gabriela was born in January 1983, and was brought to this country by her mother. Gabriela's mother and Martinez's mother were neighbors and they became friends. As a result, when she was 14 years old, Gabriela met Martinez, who was 26 at the time. Gabriela and Martinez began dating and, on one occasion after they had gone to Magic Mountain, he kissed her, then said he "wanted to go a little bit further." Although Gabriela said that she was not ready, Martinez came into the house, pushed her down on her mother's bed and, while holding her hands, placed his penis in her vagina. After he had finished, Gabriela ran into the bathroom, took a shower and started to cry. Martinez "just got up, pulled his pants up and left."

Gabriela's mother found out that Gabriela and Martinez had had intercourse. Gabriela, however, was afraid to tell her mother how it happened because, although she was not ready for the sex, she wanted the relationship. Gabriela moved in with Martinez because she "didn't want him to go to jail" because he, who was over the age of 21, had had sex with her, "an underage person." Three months later, Gabriela became pregnant. When she was 15 years old, in February 1998, Gabriela gave birth to a girl, Stephanie.

Gabriela's and Martinez's relationship was "off and on." Gabriela left Martinez for a time while she was pregnant, then went back to live with him after their daughter

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

was born. In 1999, Gabriela took Stephanie and moved to Mexico. However, before Christmas of that year, Martinez called Gabriela, told her that he had changed and sent her money to come back.

In 2001, Gabriela was living in a house in Long Beach with her mother, Martinez, Stephanie and her 11-year-old sister, Yessenia. Gabriela found out that Martinez had been sexually molesting Yessenia and, at that time, she ended her “romantic relationship” with Martinez.

Yessenia was born in October 1988. When she was 12 years old, Martinez began to touch Yessenia and, on one morning in particular, he came into her bedroom while Gabriela was showering. Yessenia had been asleep when she felt Martinez pull her pants down. Yessenia pushed Martinez away, then grabbed her teddy bear and put it between her legs. Martinez removed the teddy bear and touched Yessenia on her breasts and her vagina. Yessenia again pushed Martinez away and scratched him on his chest with her nails. After that, he walked out of the room. Yessenia got up and, when she went to school that day, she told someone what was happening. Martinez had touched Yessenia on her breasts and her “private parts” on three or four different occasions. On at least one occasion, Martinez had placed his mouth on her breast. During each incident, she had pushed him away and told him, “No.”

Nancy Megli is a middle school counselor. On March 23, 2001, Yessenia was escorted into Megli’s office by one of the school clerks. Yessenia was in tears, she was “scared,” and she appeared to be “traumatized.” After speaking to her about why she was so upset, Megli contacted the police and DPSS. Both agencies sent representatives to Megli’s office to interview Yessenia. She was then taken for a medical examination. Her breasts had marks on them because they had been “squeezed.”

At some point after these incidents, Yessenia moved to Mexico, where she currently lives.

After Yessenia came forward, Martinez moved to another house in Long Beach. He later moved to Maywood with his girlfriend, Tanya, and their two young children.<sup>2</sup> However, between 2007 and 2008, Stephanie, Gabriela's and Martinez's daughter, would, on occasion, go visit her father. During those visits, when no one else was at home, Martinez would touch Stephanie inappropriately. At first, he touched her vagina over her clothing while they were on the couch in the living room. On another occasion, "he revealed his . . . penis" and "rubbed on it" with his hand while Stephanie watched. Another time, Martinez and Stephanie were in Martinez's and Tanya's bedroom. Stephanie was asleep when Martinez woke her up by leaning on the bed. He lifted up Stephanie's night gown and penetrated her vagina with his exposed penis. On the last occasion, Stephanie was getting ready to leave and Martinez leaned up against her. Stephanie, who did not want Martinez to hurt her anymore, got out her cell phone and threatened to call her mother.<sup>3</sup>

In September, 2008, Gabriela and Stephanie moved to Victorville. After a few months, Stephanie came into the room and began to cry. When Stephanie told Gabriela why she was crying, Gabriela went to the police station in Victorville. They were closed, but gave her a telephone number to call and, approximately an hour later, a detective came to the house and took a report. As the officer was interviewing Stephanie, she was "shaking" and "having trouble breathing." Gabriela stood next to her and told her that she would be alright.

After the police officer interviewed them, Gabriela took Stephanie to a "Children's Assessment Center" where she received a medical exam. Gabriela was then contacted by a detective from the Maywood Police Department.

Stephanie visited Martinez on occasion after she had told Gabriela what had happened, but only when she was accompanied by her grandmother or her aunt.

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<sup>2</sup> The children, E. and R., were three and two years old.

<sup>3</sup> Stephanie had received the cell phone as a gift for her 10th birthday.

Los Angeles County Sheriff's Department Detective Tim Abrahams was the investigating officer in the case. He was assigned to the matter in July of 2010. After taking statements from Gabriela and Stephanie, Abrahams referred the matter to the District Attorney's Office. Abrahams had collected the 1998 report involving the allegations of Gabriela, the 2001 report from the Long Beach Police Department involving Yessenia and the Victorville report made by Stephanie. In addition, he had received DNA evidence from a piece of carpeting taken from the Long Beach home and a DVD video from the Victorville Police Department. After that, the detective interviewed a number of people.

b. *Defense evidence.*

Martinez testified that Gabriela was 14 years old when he met her. He was 26 and living at his mother's house. Gabriela lived in the apartment downstairs. He and Gabriela started out as friends. The friendship then turned into a relationship and the two had a child together. At the time, Martinez did not think about their age difference. "It was just a simple relationship."

Martinez testified that he "never" forced himself on Gabriela. Her description of the incident after they had gone to Magic Mountain was "false." He went into the house, he and Gabriela talked for a little while and then he went home. He did not have sex with Gabriela that day.

Gabriela and Martinez broke up and got back together several times. The first time they broke up was after Yessenia accused him of inappropriate sexual conduct. However, according to Martinez, those things never happened. Martinez believed that Yessenia had accused him of assaulting her because she wanted to leave the house and run away with her boyfriend.

With regard to the accusations made by Stephanie, she made them because he "stopped speaking to her. [He] forgot about her . . . because he had the other family, the one that [he] got when [he] got together with [his] wife[.]" Tanya. Martinez then indicated that, although she may have stated otherwise, in the six years since he had married Tanya, he had seen Stephanie several times. He had taken her to the movies and

to the Lakewood Mall. Martinez believed that Stephanie was so angry with him that she made up the various things he had done to her. Martinez stated, “Why would I do something like that with my wife and children present. She claims that happened while [my wife] was washing. The apartments where I live at, there’s only room for one car and that space is the washing room. Why would I do that? In the apartment where my wife is right there.”

Stephanie indicated that, during one incident, Martinez had been looking at his computer before he touched her. Martinez indicated that nothing had happened. He testified, “How is that going to happen if I’m on the computer. . . . [¶] . . . [¶] . . . How am I going to [rub her breast and vagina] when I am on the computer . . . .”

Martinez stated that he gives Stephanie Christmas gifts and birthday gifts and that most of the time he gives them to her in person. With regard to his other family, Martinez believes that Stephanie does not like them. She told Martinez on one occasion that his and Tanya’s children “were not her siblings and that she [didn’t] like Tanya because they didn’t talk at all and . . . [Tanya] would mistreat her.”

When asked, Martinez stated that he did not like having sex with underage girls. However, his wife, Tanya, had been born in February 1988. She had lied to him when they first met and had told him that she was in her 20’s. He would never have had sex with her if he had known that she was only 17 at the time. With regard to Gabriela, Martinez could not remember the first time they had sex, but he was certain that it was not on the day they had gone to Six Flags Magic Mountain.

## *2. Procedural history.*

Following a preliminary hearing, a seven count information was filed on March 9, 2011, charging Martinez with three counts of committing a lewd or lascivious act with a child who is under the age of 14 years in violation of section 288, subdivision (a) (counts 1, 2 and 3), one count of being 18 years of age or older and engaging in sexual intercourse or sodomy with a child who is 10 years of age or under in violation of section 288.7, subdivision (a) (count 4), and three counts of committing a lewd or lascivious act with a child under the age of 14 by use of “force, violence, duress, menace, or fear of

immediate and unlawful bodily injury” to be inflicted on the victim or another person in violation of section 288, subdivision (b)(1) (counts 5, 6 and 7). Martinez pled not guilty to all counts.

Trial was by jury. After all the witnesses had testified, the People, on their own motion, dismissed counts 2 and 3. The parties agreed that Stephanie had talked about only two incidents. The prosecutor indicated that there had been the one section 288, subdivision (a) “where it [was] the rubbing over the clothing and then [the] 288.7 where he’s rubbing his bare penis against her vagina with slight penetration.” The prosecutor also noted that he and defense counsel had discussed asking for “lesser included offenses as to the 288.7 being a 288[, subdivision] (a) should the jury not find penetration. [¶] . . . And then as to the 288[, subdivision] (b)[,] the lesser included of 288[, subdivision] (a) should they not find force[.]” The trial court agreed to so instruct the jury.

After listening to the court’s instructions and the arguments made by the parties, the jury began its deliberations on the afternoon of September 1, 2011. The jury reached verdicts the following morning.

With regard to count 1, the jury found Martinez “guilty of the crime of lewd act upon a child, Stephanie, in violation of . . . section 288[, subdivision] (a), a felony[.]” The jury further found that there had been multiple victims pursuant to section 667.61, subdivision (b). As to count 4, the jury found Martinez “guilty of the crime of lewd act upon a child, Stephanie, in violation of . . . section 288[, subdivision] (a), a felony, a lesser offense than that charged in count 4 of the information.” The jury again found true the allegation that there had been multiple victims pursuant to section 667.61, subdivision (b).

The jury found Martinez guilty of the forcible lewd act upon a child, Yessenia, in violation of section 288, subdivision (b)(1), a felony, as charged in count 5 of the information and found true the special circumstance that there had been multiple victims pursuant to section 667.61, subdivision (b). The jury found Martinez not guilty of a lewd act upon a child, Yessenia, in violation of section 288, subdivision (a), a felony, a lesser offense than that charged in count 6 of the information. The jury also found Martinez not

guilty of the crime of committing a forcible lewd act upon a child, Yessenia, in violation of section 288, subdivision (b)(1), a felony, as charged in count 6. With regard to count 7, the jury found Martinez not guilty of the crime of committing a lewd act upon a child, Yessenia, in violation of section 288, subdivision (a), a felony, a lesser offense than that charged in count 7 of the information. In addition, with regard to count 7, the jury found Martinez not guilty of the crime of committing a forcible lewd act upon a child, Yessenia, in violation of section 288, subdivision (b)(1), a felony.

When defense counsel asked that the jury be polled, the clerk asked, “As to all the verdicts read, are these your personal verdicts[?]” Each juror responded, “Yes.”

Martinez was sentenced on September 20, 2011. Before imposing sentence, the trial court stated, “There is one factor in mitigation, which is substantial. He has no prior record at all. I also adopt [the view expressed by certain members of his family]. It seems to be verified from everything I heard throughout the trial; that he was a very hard working man and always supported his family and took care of them. So the court will impose what is the mandatory sentence by law.”

With regard to count 1, the trial court imposed a term of 15 years to life in prison. For count 4, the trial court imposed a concurrent term of 15 years to life and as to count 5, the court sentenced Martinez to a consecutive term of 15 years to life in prison. In total, Martinez was sentenced to 30 years to life in prison. The court ordered that Martinez could have no visitation with the minor victim, Stephanie (§ 1202.05), that he was to pay a \$200 fine to the victim’s restitution fund (§ 1202.4, subd. (b)), that a \$200 parole revocation restitution fine would be imposed, then suspended (§ 1202.45), that he was to pay a \$30 criminal conviction assessment (Gov. Code, § 70373), and a \$30 court security assessment (§ 1465.8, subd. (a)(1)). He was awarded presentence custody credit for 337 days actually served and 50 days of good time/work time, for a total of 387 days. A restitution hearing was set for March 20, 2012.

Martinez filed a timely notice of appeal on September 21, 2011. He indicated that he is indigent and requested the appointment of counsel on appeal.

### **CONTENTIONS**

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed April 11, 2012, the clerk of this court advised Martinez to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

### **REVIEW ON APPEAL**

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

### **DISPOSITION**

The judgment is affirmed.

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ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.